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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OCT 18 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

To: The Commission

PETITION FOR PARTIAL RECONSIDERATION

LIN Television Corporation ("LIN") seeks partial reconsideration of the rules recently adopted in the *Report and Order* in the above-referenced proceeding, FCC 99-209, 64 Fed. Reg. 50561 (published September 17, 199) ("*Report and Order*"). Specifically, LIN requests that the Commission extend transferability of ownership to television duopolies which result from the conversion of grandfathered local marketing agreements (LMAs). LIN also endorses and incorporates by reference the petitions for reconsideration filed this day by the Local Station Ownership Coalition and the National Association of Broadcasters.

The *Report and Order* took the salutary steps of both significantly relaxing the television duopoly rule and providing some degree of grandfathering protection to the pre-November 5, 1996, LMAs. Both of these actions, while absolutely essential to the viability of over-the-air broadcasting, fell short in significant respects of the relief requested by the industry. Indeed, with respect to the grandfathering of LMAs, the time limitation imposed in the *Report and Order*, to

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the conclusion of a biennial review to be initiated in 2004, is directly contrary to the express instructions of Congress.

In one respect, however, the *Report and Order* did honor Congressional intent: grandfathered LMAs are to be freely transferable during the grandfathered period. *Report and Order* at 61. This transferability accords recognition not only to Congressional intent but to the strong equitable posture of those holding grandfathered LMAs. These arrangements were entered into in good faith and in compliance with FCC regulations. Moreover, as the unequivocal evidence in the record reflects, in the vast majority of these combinations, an established station either enabled a new station to be built or saved a failing station from going off the air. Such ventures require significant investments both in capital and in operating losses. It would have been grossly inequitable to prohibit the contracting parties from recouping those investments, particularly where their actions have without any doubt promoted diversity and competition in their local markets.

The Commission has declared that all intra-market LMAs involving more than 15% of a station's weekly hours are ownership interests and are fully attributable to the brokering entity, reasoning that the brokering party has such a strong influence over the program content of the brokered station that the brokered station should not be considered an independent voice.[1] Consistent with the view that LMAs are equivalent in material respects to full ownership status, the *Report and Order* establishes an eight voice/top four-ranked station standard for the diversity-based exception, as well as categorical waiver standards (failing/failed and unbuilt stations), that should

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[1] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy*, MM Docket Nos. 94-150, 92-51, & 87-154, FCC 99-207 at sec. III.C (adopted Aug. 5, 1999).

permit the vast majority of the grandfathered LMAs to be converted immediately to ownership. The Report and Order encourages the conversion of grandfathered LMAs by adopting the principle that eligibility for categorical waivers will be based on the status of the brokered station, *e.g.*, failing, failed or unbuilt, at the time the LMA was entered into. Those few grandfathered LMAs that do not qualify under these standards undoubtedly should be eligible for waivers under the broader public interest standard that will become effective one year from now.

But the *Report and Order* provides a trap for many of those who wish to eliminate the wasteful and cumbersome LMA mechanism by purchasing the brokered station. For despite the fact that these permissible duopolies and LMAs are now to be considered by the Commission as attributable ownership interests, a duopoly created by converting a grandfathered LMA, unlike the LMA itself, must be divested on transfer if, due to changed circumstances at the time of transfer, the combination does not then qualify for an exception or a categorical waiver (as is likely to be the case in markets with fewer than eight voices). Moreover the new owner, unlike the transferee of a grandfathered LMA interest, will be unfairly denied the opportunity to make the 2004 public interest showing – a showing designed to ensure fairness and protect the public interest.

This disparity is not only without any rational basis, it is also squarely at odds with the equitable and public-interest rationales for grandfathering pre-November 5, 1996, LMAs.[2] Moreover, it will have the pernicious effects of discriminating against small and mid-sized

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[2] The principal arguments that the Commission advanced in favor of temporarily protecting the right to maintain, transfer and renew LMAs were that (1) such protection was necessary to avoid imposing an unfair hardship on parties who had entered into LMAs before the rule change was in prospect, and (2) such protection was necessary to avoid disrupting public interest benefits. *Report and Order* at 61. Both arguments apply equally to the trap described here, since the unfair hardship and disruption imposed by forced divestiture of the purchased station are likely to be even more egregious than the consequences of forced divestiture of an LMA interest.

broadcast companies, punishing those who have invested the most and been the most successful in enhancing diversity and competition in their markets and permitting new duopolies to take priority over the continued existence of grandfathered combinations. Smaller companies are most likely to be harshly affected, of course, because they are the most likely to change hands during the grandfathered period. And because the divestiture requirement will fall most heavily on smaller and mid-sized markets, it will primarily affect LMA arrangements that enabled an unbuilt station to go on the air.

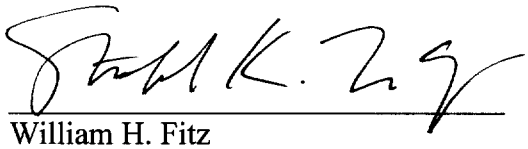
Finally, this rule creates the truly perverse possibility that a future LMA or duopoly will prevent the transfer of a duopoly created by converting a grandfathered LMA. For example, in a market with eight voices consisting of nine stations (two of which are linked in a converted-LMA duopoly), a future LMA or duopoly that is granted a waiver (because, *e.g.*, it will save a failing station) will reduce the number of independent voices in that market to seven, thus forcing the divestiture of the permissible converted-LMA duopoly upon transfer of the license. Nor is this converted LMA phenomenon a remote possibility: It will directly affect literally dozens of mid-sized markets, including all four in which LIN operates grandfathered LMAs. And, because LMA/duopolies result in substantial operating efficiencies, requiring divestiture only on condition that the stations be operated independently will dramatically reduce their asset value.

The infirmities and arbitrariness of the eight voice/top four-ranked station standard and, indeed, the lack of justification for applying time limits to the grandfathering of LMAs are amply set forth in the LSOC and NAB petitions. Suffice it to say here that, whatever action the

Commission takes with respect to these broader questions, it should eliminate any restrictions on the transferability of duopolies that result from the conversion of grandfathered LMAs.

Respectfully submitted,

LIN TELEVISION CORPORATION



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